THE HON'BLE MR JUSTICE R.SUBHASH REDDY

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WRIT PETITION NO : 17548 of 2005

Dated: 09.09.2005

Between:

V. Seshappa S/o V. Sreerama Subbaiah
R/o D. NO. 18/18 F-3, Opp RTC Busstand,

60' Road, Guntakal, Ananthapur Distrct and others.

..... PETITIONERS

AND

Land Acquisition Officer and Revenue Divisional Officer,

Ananthapur, RDO Office, Near Tower Clock,Ananthapur.

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.....RESPONDENT

THE HON'BLE SRI JUSTICE R.SUBASH REDDY

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WRIT PETITION No. 17548 of 2005

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ORDER:

This writ petition is filed questioning the memo dated 07.08.2003 issued by the respondent-Land Acquisition Officer-cum-Revenue Divisional Officer, Anantapur, rejecting the application filed by the petitioner for referring the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 (for short "the Act").

An extent of Ac.2.93 ¼ cents of land belonged to the petitioners covered by S.No. 452-A1C situated at Thimmancherla village, Guntakal Mandal of Anantapur District was acquired by the Government for the purpose of construction of bus station. Dissatisfied with the quantum of compensation and deduction of 1/3rd area from the notified land while passing the award, the petitioner earlier approached this Court by filing a writ petition in W.P.No.5742 of 1992. By an order, dated 27.10.1992, this Court directed the Land Acquisition Officer to refer the matter under Section 18 of the Act to the Civil Court. Aggrieved by the same, the respondent and the Joint Collector, Anantapur preferred a writ appeal in W.A.No. 1552 of 1995 on the ground that the application, which was filed under Section 18 of the Act, was not filed within the stipulated time as per the Statute. A Division Bench of this Court, by the order dated 07.08.2000, while allowing the writ appeal in W.A.No. 1552 of 1995 filed by the respondent in part, directed the Land Acquisition Officer to decide the limitation aspect also with reference to the application made by the petitioners under Section 18 of the Act. Consequent to the said orders, while referring the directions issued by this Court in the writ petition as modified by the Division Bench, the respondent passed the impugned order dated 07.08.2003 rejecting the application only on the ground that the petitioners' father Sreerama Subbaiah received the compensation without any protest.

It is submitted by the learned counsel for the petitioners that the Land Acquisition Officer has not considered the issue in the light of the directions issued by this Court in W.A.No. 1552 of 1995 and that the only question that was required to be considered is whether the application was filed within the period of limitation, but however, without considering the said aspect the impugned order is passed rejecting the application of the petitioners only on the ground that the compensation was received by the father of the petitioners without any protest. The learned counsel placed reliance on the decision of the Full Bench of this Court in the case of ***District Collector, Kakinada Vs. P.Nagabhushana Rao*** wherein the Full Bench of this Court held that seeking reference to the Civil Court under Section 18 of the Act

will impliedly infer that the claimant had accepted the amount with protest.

On the other hand, it is submitted by the learned Government Pleader for Land Acquisition that inasmuch as there was no protest as per the provisions of the Act, the claim of the petitioners is correctly rejected by the Land Acquisition Officer.

Having gone through the earlier orders passed by this Court in the writ petition, wherein there was a positive direction issued by the learned Single Judge to refer the matter to the Civil Court under Section 18 of the Act, and the order in the writ appeal, preferred by the respondent, wherein when the limitation aspect was raised this Court directed the respondent to consider the said issue also as to whether the application was filed within the stipulated time or not, it is evident that the impugned order is passed not with reference to the limitation, but only on the ground that the original awardee has received the compensation without any protest.

The judgment of the Full Bench of this Court relied on by the learned counsel for the petitioners squarely covers the issue as to whether any such protest is necessary to seek reference under Section 18 of the Act. The Full Bench of this Court has categorically held that the application seeking reference can still be considered even in cases where claimants failed to protest at the time of receiving the compensation. In that view of the matter, the only reason assigned in the impugned order cannot survive.

Accordingly, the impugned order dated 07.08.2003 passed in proceedings No.D1LA/1259/2000 rejecting the application of the petitioners under Section 18 of the Act is hereby set aside and the respondent-Land Acquisition Officer-cum-Revenue Divisional Officer, Anantapur is directed to consider afresh the application of the petitioners in the light of the directions issued by this Court in W.A.No. 1552 of 1995 within a period of six weeks from the date of receipt of a copy of this order and communicate the same to the petitioners. It is needless to observe that before taking any decision, the petitioners shall be given an opportunity by issuing a notice.

With the above direction, the writ petition is disposed of. No costs.

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09.09.2005

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